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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.1226 OF 2007

Hindustan Lever Limited Petitioner

versus

Hindustan Lever Employees' Union Respondents
and another

Mr.P.K.Rele, Sr.Counsel with Mr.V.M.Tayade i/by Piyush Shah for petitioner.

Mr.K.K.Singhvi, Sr.Counsel with Ms.Meena H. Doshi for respondents.

CORAM : DR.D.Y.CHANDRACHUD, J.

DATE : 09TH JULY 2007

PC :

1. Rule, by consent returnable forthwith. On the request of the Learned Counsel, taken up for hearing and final disposal.

2. The Industrial Tribunal in pursuance of the order of remand dated 6th December 2006 passed by this Court in Hindustan Lever Limited Vs. Hindustan Lever Employees Union and others {(2007)1-CLR-737} is seized of the proceedings in the wage reference. After the order of remand,

the management filed an application on 30th March 2007 for producing additional documents and for permission to examine witnesses. The application was opposed. By an order dated 28th May 2007 the application was rejected by the Industrial Tribunal on the ground that the remand by this Court was, according to the Tribunal, "for reconsideration afresh and not for fresh adjudication or readjudication."

3. The management has challenged the order of the Industrial Tribunal. When the writ petition came up before a learned Single Judge of this Court on 15th June 2007, the Court was of the view that it was appropriate that the petition be placed for hearing before me since the earlier judgment and order of remand was delivered by me and the question of interpretation of the observations contained in the judgment arose. The papers accordingly are placed before this Court in pursuance of the directions of the Hon’ble the Chief Justice.

4. The order of remand passed by this Court is contained, inter alia, in paragraph 57 of the judgment which reads thus :-

> "57. ... ... For all these reasons, I am of the view that there is a considerable degree of merit in the challenge preferred by the management to the legality and validity of the award of the Tribunal. The management has challenged the award, as noted earlier, in respect of (i) Basic wages; (ii) Additional HRA; (iii) Retrospective effect and interest; (iv) Filling up of vacancies; (v) Pension; (vi) Grant of two days additional paid holidays; and (vii) Shift allowance. HLL has stated before the Court that it has accepted the award in so far as it relates to the conferment of permanency on three workmen. Save and except in regard to the grant of shift allowance, and permanency to three workmen whose names are noted above, I am of the view that rule will have to be made absolute in terms of prayer (a) of the petition filed by HLL. The proceedings shall stand remitted back to the Industrial Tribunal for reconsideration in the light of the observations contained in this judgment. Upon remand, the Tribunal shall endeavour an expeditious disposal, preferably within a period of six months from the date on which a certified copy of this order is produced before it."

5. The learned counsel appearing on behalf of the management urges that the order of remand is untrammelled and does not preclude the management from leading additional evidence. On the other hand, it has been submitted on behalf of the Union that before this Court it was duly accepted by both the sides that M/s.Colgate Palmolive was regarded by the parties as a comparable concern. The attention of the Court has been drawn to the

following observation contained in paragraph 26 of the judgment :-

> "... ...In fairness, it must be stated that even both the contesting parties accepted the factual position that Colgate Palmolive is regarded by the parties as a comparable concern."

Similar observations are also contained in paragraph 32 of the judgment which reads thus:-

> "... ...The management had accepted that Colgate was comparable."

Hence, it is urged on behalf of the Union that having accepted that Colgate Palmolive was a comparable concern, it was not open to the management to produce additional documentary evidence dealing with other companies namely Britannia, Godrej Soaps, VVF Limited and Godrej Foods. Moreover, it was submitted that even before this Court it has been admitted that Colgate Palmolive, has during pendency of the reference, been closed down notwithstanding which parties regarded the aforesaid concern as being comparable.

6. A reading of the judgment of this Court dated 6th December 2006 leaves no manner of doubt that before this Court both the parties had accepted the factual position that Colgate Palmolive is regarded by the parties as "a comparable concern". The order contains a reference to the accepted position between the parties in paragraph 26. It must be noted that it is not the contention of the management before this Court in the course of submissions that the statement has been erroneously recorded. Be that as it may, the management in its application before the Industrial Tribunal has now taken a stand that after closure of the Tooth Paste manufacturing unit of Colgate Palmolive, Colgate Palmolive ceased to be a comparable concern. In my view, it is neither proper nor appropriate to make any observations on the question as to whether the developments which have taken place in the interregnum namely the closure of Colgate Palmolive’s unit, would lead to a situation where that cannot be regarded any more as being comparable. On this aspect, the parties will be at liberty to urge their respective contentions before the Industrial Tribunal. The order of this Court cannot be regarded as precluding the management from placing the developments that

have taken place in the interregnum on the record. At the present stage, the request of the management, in the submissions urged by counsel in the proceeding, is confined to the production of documentary material alone on the record, details whereof are contained at Exhibit-E to the petition. There is no reason why production of documents should be barred at the present stage. However, while permitting the management to do so, it will be necessary to clarify that this will be without prejudice to the contentions of the Union, both in the matter:-

(i) of whether the unit of Colgate Palmolive continues to be a comparable concern notwithstanding its closure; and

(ii) to produce such additional documentary material as the Union may be advised to produce.

7. The impugned order is accordingly quashed and set aside and shall stand substituted by the aforesaid directions. Time for completing the adjudication is extended by four months from today. The Writ Petition is accordingly allowed in the above terms. No order as to costs.

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(DR.D.Y.CHANDRACHUD, J.)